



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,122	06/20/2005	Michael Demitz	104035.283800	8843
7055 7590 08/25/2008 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER YU, GINA C	
			ART UNIT 1617	PAPER NUMBER
			NOTIFICATION DATE 08/25/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Art Unit: 1617

Continuation of No. 7:

The claim amendment submitted on July 15, 2008, is entered and causes to withdraw the rejection on claims 33-35, made under 35 U.S.C. § 102 (a) as being anticipated by Muller. The remaining claims would be rejected as following:

Claims 18-35, 37-41 are rejected under 35 U.S.C. §103 (a) as being unpatentable over Muller in view of Peffly et al. (US 5997886).

Claims 26-35, 37-41 are rejected under 35 U.S.C. §103 (a) as being unpatentable over Muller in view of Flick (Cosmetic Additives, 1991).

Claims 18-32 are rejected under 35 U.S.C. §103 (a) as being unpatentable over Muller in view of Rollat et al. (US 20030147834 A1).

Continuation of No. 11:

Obviousness rejection made over Muller in view of Peffly

Applicant asserts that there is no apparent reason to combine Muller and Peffly because the Muller compositions are “for cleaning or caring for the skin, teeth or hair or for cleaning smooth surfaces” while the Peffly compositions are directed to hair styling compositions. Furthermore, applicant argue that the arts are not combinable because Muller exemplifies rinse-out shampoo and conditioner, while the Peffly products are leave-on compositions. The arguments are unpersuasive because both Muller and Peffly are both in hair care art available to a skilled artisan at the time of the present invention. As stated in the rejection, Peffly teaches to combine hair conditioning and hair style or shine agents to make a hair care product. Also, a skilled artisan reading

Art Unit: 1617

the Muller reference would have appreciated that not all components of the Muller compositions are to be washed and rinsed away from the substrate, since the residues of conditioning agents remain on hair and provide hair the beneficial property.

Furthermore, shampoo is not the only product that is envisioned by the Muller disclosure, as the reference teaches applicability of the invention to make spray, gel, and foams.

Applicant also argues that the selection of the applicant's hair styling polymer would amount to mere picking and choosing from the polymers disclosed by Peffly. The argument is unpersuasive because applicant's selections of the polymers are general also, ranging from amphoteric or anionic polymers to cellulose derivatives.

Furthermore, the obviousness rejection is deemed proper because a skilled artisan would have found motivation to use the disclosed prior art polymers because these are art-recognized functional equivalents from one another.

Applicant also argues that a routineer would not have been motivated to use the hair styling polymers of Peffly because Muller already uses a narrowly defined pregelatinized polymer. However, Muller teaches that pregelatinized starch polymer is useful for particular purposes, i.e., for easy combing of hair and making the hair sleek. It would be a subjective insight to treat these benefits as the only desirable properties that a skilled artisan would want in a hair care product. A reasonable skilled artisan would be motivated to advance and improve given prior arts once there are some teaching, suggestion, and motivation to do so.

Applicant also argues that anionic and amphoteric polymers may be incompatible with the pregelatinized starch polymer, but there is no evidence of the record to support that position.

Applicant also argues that not every hair styling polymers of the Peffly is combinable with other components. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Muller and Peffly teach sufficient motivation to combine the teachings to make a hair conditioning and styling product; furthermore, it is viewed that whether certain polymers are combinable with another would be well within the skill of cosmetic art.

Muller in view Flick

Applicant asserts that Muller fails to discuss using any polymers different from the starch derivatives therein, although hair rinse and shaving preparations contain guar and PVP polymers, respectively. Applicant argues that the reference implicitly suggests not to combine any polymers not disclosed in the reference. The argument is unpersuasive, because the reference clearly indicates that the invention is applied to make other formulations such as gel and foam, and examiner views that there is no teaching, either explicitly or implicitly, to prevent the modification of the Muller invention to further the interest of hair care art.

Applicant also argues that since the pregelatinized, crosslinked starch and the quaternized cellulose of Flick impart the same benefits to the hair, combability and sleek look, there would have been no reason to combine these components. The argument is unpersuasive because a skilled artisan would have certainly expected an additive and improved hair care benefits.

Applicant also argues that the PVP polymer of Flick would form hard and glossy films and would not be desirable in making shampoos and conditioners of Muller. Again, Muller is not limited to hair shampoos and conditioners, and there is no teaching, either explicitly or implicitly, to teach away from adding the PVP polymers.

Muller in view of Rollat

Applicant again argues that Muller is directed to a composition for cleaning or caring for skin, teeth or hair, but does not also maintains that is not combinable with other hair art references. The argument is unpersuasive, since both Muller and Rollat are drawn to hair care products, and Muller specifically indicates the hair conditioning property of the pregelatinized, crosslinked starch polymer. Thus one skilled in the art would have been motivated to combine the hair conditioning composition with other benefit active agent for hair, such as hair styling polymer, to make a conditioning and styling product.

Applicant also argues that there is no disclosure in Rollat that methacrylic copolymers is anionic or amphoteric and suggests that the polymer appears to be nonionic. The argument is unpersuasive, as the reference clearly indicates using

Art Unit: 1617

Amphomer, which is amphoteric polymer, and also teaches anionic polymers through out the specification.

In response to applicant's general argument that a routineer would have been deterred from modifying the prior arts due to compatibility concerns, examiner again reiterates that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this case, the prior arts provide specific motivations to make a hair conditioning and styling product, and discovering an optimal formulation of these components would be within the skill of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1617